



## FLASH NEWS

5/20

# EUROPEAN COURT OF HUMAN RIGHTS

OVERVIEW FROM 01/04 TO 15/05/2020

### RS / DRAGAN PETROVIĆ v SERBIA

**Right to privacy - Oral DNA sampling in the context of a criminal investigation - Predictability of the legal basis**

**Non-infringement** of Article 8 (right to respect for private and family life) of the ECHR with regard to a search of the applicant's home.

**Infringement** of Article 8 by reason of the taking of a sample of the applicant's saliva.

The applicant, a Serbian national, had been the subject of two decisions in a criminal murder investigation, ordering a search of his home and the taking of a saliva sample for DNA analysis. He alleged that both the search and the taking of the sample amounted to an infringement of his rights under Article 8 of the ECHR.

Judgment of 14/04/2020 (application no. 75229/10) ([EN](#))

Press release ([FR](#) / [EN](#))

### HU / ATV ZRT v HUNGARY

**Freedom of expression - TV company banned from calling a political party a 'far-right' party**

**Infringement** of Article 10 (freedom of expression) of the ECHR.

The applicant, a company providing audiovisual services, had been banned by the National Media and Infocommunications Authority from describing the Hungarian political party Jobbik as a 'far-right' party. Arguing that the notion of 'far right' was widely used in relation to Jobbik, that it had a precise meaning in political and social science, and that it reflected Jobbik's position in Parliament, it argued that the ban constituted an interference with its right to freedom of expression that could not be considered necessary in a democratic society.

Judgment of 28/04/2020 (application no. 61178/14) ([EN](#))

Legal summary ([EN](#))

### BE / M.N. AND OTHERS v BELGIUM [GC]

**Scope of application of the ECHR - Visa applications submitted to embassies and consulates - Refusal to grant visas to persons seeking asylum - Lack of territorial jurisdiction**

**Inadmissibility** of the application on the grounds of its incompatibility *ratione loci* with respect to Articles 3 (prohibition of torture, inhuman or degrading treatment) and 13 (right to an effective remedy) of the ECHR and its incompatibility *ratione materiae* with respect to Article 6 (right to enforcement of a judicial decision) of the ECHR.

The applicants, a couple of Syrian nationals and their two children, had been refused short-term visas that they had applied for, on the basis of the Community Code on Visas, from the Belgian Embassy in Beirut with a view to subsequently seeking asylum in Belgium. The applicants considered, in particular, that this refusal exposed them to a situation contrary to Article 3 of the ECHR, without the possibility of an effective remedy in accordance with Article 13. They also felt that Belgium was subject to respect for the rights provided for in the ECHR, both because of the processing of visa applications and because of the legal proceedings instituted by the applicants in Belgium against decisions to refuse them.

Decision communicated on 05/05/2020 (application no. 3599/18) ([FR](#) / [EN](#))

Press release ([FR](#) / [EN](#))

See also judgment of the Court of 7 March 2017, X and X ([C-638/16 PPU](#), [ECLI:EU:C:2017:173](#)).

## RO / KÖVESI v ROMANIA

**Access to a court - Freedom of expression - Impossibility for a prosecutor to challenge her dismissal - Importance of the independence of the Prosecutor's Office for the independence of the judiciary**

**Infringement** of Article 6 §1 (right to a fair trial/right of access to a tribunal) of the ECHR.

**Infringement** of Article 10 (freedom of expression) of the ECHR.

The applicant, a senior prosecutor at the National Anti-Corruption Directorate, complained about the decision to dismiss her from her post before the end of her second term of office, following her criticism of legislative reforms in the area of corruption. She further argued that she had not been able to challenge that decision in court.

Judgment of 05/05/2020 (application no. 3594/19) ([EN](#))

Press release ([FR](#) / [EN](#))

## HU / SUDITA KEITA v HUNGARY

**Right to respect for private and family life - Positive obligations - Prolonged obstruction of the regularisation of the situation of a stateless person**

**Infringement** of Article 8 (right to respect for private and family life) of the ECHR.

The applicant, a stateless person of Somali and Nigerian origin, complained of the difficulties he had faced in regularising his situation in Hungary. For 15 years (since 2002, when his application for refugee status was rejected), except from 2006 to 2008, when he was granted the status of 'tolerated person', he had remained on Hungarian territory illegally. The applicant claimed that the attitude of the Hungarian authorities had had prejudicial consequences on his access to healthcare and the labour market, as well as on his right to marry.

Judgment of 12/05/2020 (application no. 42321/15) ([EN](#))

Press release ([FR](#) / [EN](#))

## HR / MRAOVIĆ v CROATIA

**Right to a fair trial - Balancing the offender's right to a public hearing with the victim's right to privacy - Protection against the risk of 'secondary victimisation'**

**Non-infringement** of Article 6 §1 (right to a fair trial) of the ECHR.

The applicant, a Croatian national sentenced to three years' imprisonment for rape, alleged that the domestic courts had based their decision to exclude the presence of the public from his trial solely on the need to protect the victim's privacy, without balancing this against his right to a public hearing, and had failed to explain why they considered it necessary to hold the trial in total, rather than partial, secrecy.

Judgment of 14/05/2020 (application no. 30373/13) ([EN](#))

Press release ([FR](#) / [EN](#))

## HR / ROMIĆ AND OTHERS v CROATIA

**Right to a fair trial - Principle of equality of arms - Principle of adversarial proceedings**

**Infringement of Article 6 §1** (right to a fair trial) of the ECHR concerning the violation of the principle of equality of arms and adversarial proceedings.

**Infringement of Article 6 §§1 and 3(c)** (right to a fair trial and to be assisted by a lawyer of one's choice) of the ECHR concerning the absence of the applicants when the appellate court was sitting.

The applicants, seven Croatian nationals and one national of Bosnia and Herzegovina, alleged that, in the appeal proceedings against them, the observations of the Prosecutor's Office had never been communicated to them and that, as a result, there had been a violation of the principle of equality of arms and/or that the panels hearing their appeals had sat in their absence.

Judgment of 14/05/2020 (applications nos. 22238/13, 30334/13, 38246/13, 57701/13, 62634/14, 52172/15 and 17642/15) ([EN](#))

Press release ([FR](#) / [EN](#))